IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8431 OF 2007

Janardan P. Kalap and Ors. ...Petitioners

Versus

Addl.Collector (Enc) and anr. ....Respondents

Mr.G.S.Godbole i/by.Manoj Kumar Upadhyay for the petitioners.

Mr.G.D.Utangale for the SRA.

Mr.Tushar Bhavsar i/by.M.Bhat for respondent Nos.4 and 5.

CORAM: S.C.DHARMADHIKARI, J.

30th November, 2007

P.C. :

1. The petitioner challenges a notice dated 20.11.2007 which has been issued by the Deputy Collector (Encroachment and Removal) and competent authority, Borivali. By this notice, the petitioners who are at the subject site have been directed to be removed in case they do not remove themselves with their

structures. In other words, the land was to be handed over in vacant state so as to rehabilitate the slum dwellers, who are eligible. After this matter was placed before me, I had protected the petitioners uptil today on the basis that the petitioners have approached the authorities for having the issue of their eligibility for the present alternate accommodation decided in the applications/appeals which are pending. Although the issue has been decided by the Additional Collector, none dispute that under the Scheme, an appeal lies from that decision to the Chief Executive Officer of the appropriate authority which in this case, is the Mumbai Metropolitan Regional Development Authority (MMRDA).

2. Mr.Godbole, after taking instructions states that even if the appeals have been lodged erroneously with SRA, now the petitioners be given an opportunity to approach the Metropolitan Commissioner/CEO of MMRDA and the Metropolitan Commissioner/CEO be directed to decide the issue of their eligibility.

3. Mr.Bhavsar appearing for the Developer and the Society has no objection provided the Metropolitan Commissioner/CEO is directed to decide the issue in a time frame so as to not halt and hamper the development at site.

4. The petition is therefore disposed off by giving opportunity to the petitioners to approach the Metropolitan Commissioner/CEO, (MMRDA) and if they approach him with the Appeals/applications within a period of 15 days from today, the Metropolitan Commissioner/CEO to decide the same as expeditiously as possible and within a period of 4 weeks from the date they are filed before him. The Metropolitan Commissioner/CEO to decide the Appeals after giving opportunity to the petitioners of being heard. The Metropolitan Commissioner/CEO to thereafter communicate the orders to the petitioner. All contentions insofar as eligibility are concerned are kept open.

5. Needless to state that the protection granted by this court will continue only to enable the petitioners to approach the Metropolitan

Commissioner/CEO and have the issue of their eligibility decided. If they want to avail of this opportunity, only then the protection must continue. Therefore, if the petitioners do not approach the Metropolitan Commissioner/CEO within a period of 15 days stipulated above, then the ad-interim order granted by this court would automatically come to an end. However, if the Appeals/Applicatons are filed, then the Metropolitan Commissioner/CEO to decide the same and till such decision, the ad-interim protection granted by this court would continue. The Metropolitan Commissioner/CEO not to dismiss the Appeals/Applications on the ground of delay, but, must deal with them on merits and in accordance with law. Needless to state that in case of the petitioners who are not alive, their heirs and legal representatives can approach the CEO, who shall be at liberty to verify and scrutinise their claims as such legal heirs and representatives.

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